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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

AMAMGBO & ASSOCIATES et al.,
Plaintiffs and Appellants,

v.

CSAA INSURANCE GROUP et al.,
Defendants and Respondents.

A154771

(Alameda County
Super. Ct. No. HG17884590)

Amamgbo & Associates (Amamgbo), Emeziem & Others (Emeziem), and Daniel Donner (collectively, Appellants) appeal from two orders granting special motions to strike their complaint under the anti-SLAPP (strategic lawsuit against public participation) statute. (Code Civ. Proc., § 425.16.)¹ The respondents are the CSAA Insurance Group (CSAA), Eric Eugene Williams (Williams), the law firm of MacMorris & Carbone, currently known as Carbone, Smoke, Smith, Bent & Leonard (the Carbone Law Firm), and James R. Morgan (Morgan) (collectively, Respondents). Appellants sued Respondents based on their disbursement of settlement funds without paying Appellants' liens. We conclude Appellants' claims do not arise from protected activity. Accordingly, we reverse the orders granting the special motions to strike the complaint.

¹ All undesignated statutory references are to the Code of Civil Procedure.

FACTUAL AND PROCEDURAL HISTORY²

I. *The Personal Injury Action*

In May 2009, Enrique Alvarez Martinez (Martinez) sustained injuries from a motor vehicle accident in Concord, California. Martinez entered into a retainer agreement with Amamgbo, granting Amamgbo “a lien on [Martinez’s] claim . . . to secure payment to [Amamgbo] of all sums due under this Agreement for services rendered and costs advanced.”

In September 2010, “Amamgbo transferred Martinez’s file to . . . Emeziem for further handling because [Amamgbo] accepted an appointment in Nigeria.” Amamgbo and Emeziem performed legal work for Martinez between May 2009 and May 2011. Donner provided acupuncture treatment.

In February 2011, Emeziem filed a lawsuit on behalf of Martinez in Contra Costa County. The defendant was represented by Williams and the Carbone Law Firm based on the defendant’s policy of insurance with CSAA. Martinez retained Morgan, and Emeziem executed a substitution of attorney.³

In May or June 2011, Respondents received a notice of attorney lien from Emeziem in the amount of \$31,093.⁴ Around the same time, they received a notice of medical lien from Donner in the amount of \$6,882.18.

Appellants allege the personal injury action was settled but “[i]nstead of contacting [Appellants] to pay or negotiate their liens, on or about October 31, 2013 [Respondents] colluded and filed a motion to enforce settlement and expunge . . . [the] liens.” Morgan filed a motion to enforce the settlement and resolve the liens on October

² The facts are taken from the complaint and the declarations and evidence submitted in connection with the special motions to strike. (§ 425.16, subd. (b)(2).)

³ In a declaration in the personal injury action, Morgan averred that Amamgbo “abandoned” Martinez, transferred his case to Emeziem without Martinez’s consent, and Martinez was initially unaware Emeziem filed a complaint.

⁴ The notice of attorney lien identifies Martinez’s former counsel as Emeziem & Ogbu, LLP, not Emeziem & Others.

31, 2013. Williams and the Carbone Law Firm filed a similar motion on November 8, 2013. Emeziem and Donner opposed the motions and requested payment of their liens.

The court held a hearing on the matter on February 4, 2014. It granted the motions to enforce the settlement and expunged the liens.⁵ Attorneys Morgan, Williams and Emeziem were present at the hearing. Based on the court's order, on March 3, 2014, Williams sent Martinez and Morgan a settlement check of \$60,000 issued by CSAA. In return for the settlement check, Martinez signed a release of all claims against the defendant. Martinez's attorney, Morgan, filed a request for dismissal of Martinez's personal injury action, which the court granted on March 6, 2014.⁶

Four months after Williams sent the settlement check, on July 3, 2014, Appellants filed a notice of appeal from the trial court's order expunging their liens. On March 24, 2015, in an unpublished opinion, Division Three of this court determined the trial court acted in excess of its jurisdiction by expunging the liens and it remanded the matter for the trial court to delete language from its order. The trial court did so on June 17, 2015. After the Court of Appeal decision, Appellants "requested that [Respondents] pay their liens and [Respondents] either refused or ignored [Appellants]."

II. *Appellants' Action Against Their Former Client/Patient*

In February 2016, Appellants filed a lawsuit against Martinez and Morgan in Alameda County for breach of contract and other claims. In November 2017, Appellants obtained a default judgment against Martinez in the amount of \$39,732.50.

III. *The Underlying Action*

In December 2017, Appellants sued Respondents in Alameda County asserting causes of action for intentional interference with contractual relations, constructive trust, and conversion. The complaint alleges Respondents disbursed settlement proceeds in the

⁵ Judge Judith S. Craddick presided at the hearing. The minute order is dated February 4, 2014, but the written order was not filed until over six months later, on August 21, 2014.

⁶ There is no information in the record regarding how much Martinez paid Morgan for representing him in the personal injury action.

personal injury action with knowledge of Appellants' "lien rights," but without paying or reimbursing them for their liens.

In April 2018, CSAA, Williams, the Carbone Law Firm, and Morgan filed two special motions to strike the complaint. They argued they distributed the settlement proceeds in compliance with the court's order. Morgan stated Appellants' "remedy is against . . . Martinez, the recipient of the proceeds and against who[m] [Appellants] now have a judgment." Appellants opposed the motions. The trial court granted the special motions to strike. This appeal followed.

DISCUSSION

I. *Governing Law and Standard of Review*

Section 425.16 authorizes a defendant to file a special motion to strike when a cause of action arises from "any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution" (§ 425.16 (b)(1).) We review de novo the grant or denial of an anti-SLAPP motion. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067 (*Park*).)

There are two prongs to the anti-SLAPP analysis. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76.) "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. [Citation.] 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e)' [citation]. If the court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim. [Citations.]" (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.)

II. *Appellants' Causes of Action Do Not Arise from Protected Activity*

Here, in granting the anti-SLAPP motions, the trial court determined "Defendants have satisfied the first step of the process by demonstrating that each of Plaintiffs' causes of action arises, in a more than merely incidental way, from [protected] activity Specifically, each of Plaintiffs' three causes of action is based, in a more than merely

incidental way, on Defendants filing a motion to enforce settlement and expunge Plaintiffs' liens, which Judge Craddick granted on February 4, 2014. Defendants then paid the settlement funds to Martinez and his attorney, Defendant James Morgan, pursuant to Judge Craddick's order, on March 3, 2014."

Based on our de novo review, we disagree with the trial court that Respondents satisfied the first step of the anti-SLAPP analysis. As explained by our high court, "a claim is not subject to a motion to strike simply because it contests an action or decision that was arrived at following speech or petitioning activity Rather, a claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted." (*Park, supra*, 2 Cal.5th at p. 1060.) "[I]n ruling on an anti-SLAPP motion, courts should consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability." (*Id.* at p. 1063.) Courts must take care "to respect the distinction between activities that form the basis for a claim and those that merely lead to the liability-creating activity" (*Id.* at p. 1064.)

Here, although the complaint could be clearer, it asserts causes of action for intentional interference with contractual relations, constructive trust, and conversion based on Respondents' disbursement of settlement funds to Martinez with knowledge of Appellants' liens and without paying Appellants' liens.

The elements of a cause of action for intentional interference with contractual relations are: "(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148.) Here, Appellants allege Respondents induced or enabled Martinez to breach his retainer agreement when Respondents "fail[ed] to reimburse [Appellants] their costs incurred and fees earned."

“ ‘[T]o create a constructive trust . . . three conditions must be satisfied: the existence of a res (property or some interest in the property); the plaintiff’s right to that res; and the defendant’s acquisition of the res by some wrongful act.’ ” (*Optional Capital, Inc. v. DAS Corp.* (2014) 222 Cal.App.4th 1388, 1402.) Similarly, “ “ ‘[t]he elements of a conversion claim are: (1) the plaintiff’s ownership or right to possession of the property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages.’ ” ’ [Citation.]” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.) Here, Appellants allege they were entitled to over \$39,000 of the \$60,000 paid to Martinez. They allege entitlement to settlement funds, but Respondents “refused to surrender” the funds.

Although not cited by Appellants, this case is similar to *Old Republic Construction Program Group v. The Boccardo Law Firm, Inc.* (2014) 230 Cal.App.4th 859, in which the Court of Appeal determined causes of action relating to the disbursement of settlement funds did not constitute protected activity under the anti-SLAPP statute. (*Id.* at pp. 869–870.) In *Old Republic*, the complaint alleged attorneys disbursed settlement funds in violation of the terms of a stipulation. (*Id.* at pp. 863, 865.) The Court of Appeal determined the “causes of action at issue here refer to, and may depend on, defendants’ having entered into the stipulation, which was itself protected conduct; but they do not assert that there was anything wrongful about that conduct.” (*Id.* at p. 869.) Instead, it “was the withdrawal of funds that was the [alleged] wrongful conduct.” (*Id.* at p. 870.) Similarly here, Appellants complain about the disbursement of settlement funds without paying their liens.

In arguing otherwise, Respondents argue “[t]he motion to expunge was the ‘protected’ activity because it led to the actions of the respondents CSAA/Williams/Carbone paying the settlement amount to Enrique Martinez . . . and the dismissal, with prejudice, of [the personal injury action].” After the February 4, 2014 hearing, and before Respondents disbursed the settlement proceeds a month later, Appellants “failed to take a writ, file an appeal or seek a stay” of Judge Craddick’s order. Thus, Respondents were simply complying with “the existing order of the court” when they paid the

settlement funds to Martinez.⁷ In March 2015, long after the funds were disbursed, Division Three of this court held the trial court did not have jurisdiction to expunge the liens, but, as pointed out by Respondents, Division Three offered no opinion regarding the validity of the liens.

For the purposes of our anti-SLAPP analysis, we conclude these arguments are beside the point because Appellants' claims are not based on the motions to expunge the liens or the expungement order; instead, they are based on Respondents' failure to honor Appellants' "lien rights," and they complain Respondents wrongfully "detained" or "diverted" their fees and costs. We cannot ignore that this disbursement was the alleged "liability-creating activity." (*Park, supra*, 2 Cal.5th at p. 1064.) While the trial court's order expunging the liens—an order that was not appealed until months later—explains why Respondents did not pay the liens, it remains the case that the disbursement of the settlement funds was not activity in furtherance of Respondents' rights of petition or free speech, and the anti-SLAPP statute does not apply. (§ 425.16, subds. (b)(1), (e).)

In ruling otherwise, the trial court determined the causes of action were "based, in a more than merely incidental way," on the motions to enforce the settlement and expunge the liens. The court relied on *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 672–673, in which the Court of Appeal determined that when a cause of action is "based on both protected and unprotected activity," it is subject to section 425.16 " 'unless the protected conduct is "merely incidental" to the unprotected conduct.' "

In *Baral v. Schnitt* (2016) 1 Cal.5th 376, 394, our high court commented on the concern of courts about allowing defendants to target fragmentary allegations, no matter

⁷ At oral argument, Morgan sought to distinguish *Old Republic Construction Program Group v. The Boccardo Law Firm, supra*, 230 Cal.App.4th 859, by arguing it concerned withdrawal of settlement funds in defiance of the terms of a stipulation, but Respondents paid the settlement funds to Martinez in compliance with the court's order. This argument goes to the merits of Appellants' claims against Respondents. We have "no occasion to consider . . . [Appellants'] likelihood of success unless the action arises from protected activity." (*Id.* at p. 866.)

how insignificant, that are “ ‘merely incidental’ ” or “ ‘collateral’ ” to the claim for relief, and it noted these collateral allegations are not subject to section 425.16. As our high court stated, “Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute.” (*Baral v. Schnitt*, at p. 394.) Here, the allegations regarding the filing of the motions to enforce the settlement provide context, but Appellants seek relief based on Respondents’ failure to pay their liens notwithstanding the trial court’s expungement order.⁸ It is this activity—or failure to act—that forms the basis for the three causes of action.

Appellants do allege in their factual allegations that Respondents “colluded and filed a motion to enforce [the] settlement and expunge . . . [the] liens.” But in the charging allegations Appellants seek relief based on Respondents “failing to reimburse” them, or because Respondents “wrongfully detained” and “refused to surrender” the settlement funds. Appellants’ claims for recovery are based on these alleged wrongful acts, not on the court proceedings that led to them. Accordingly, Respondents have not met their threshold burden of showing the causes of action arise from protected activity.⁹

DISPOSITION

We reverse the two orders granting the special motions to strike the complaint. Appellants are entitled to costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

⁸ In *Baral v. Schnitt*, *supra*, 1 Cal.5th at page 396, our high court further explains that “[w]hen relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this [first] stage [of the anti-SLAPP analysis]. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached.” Here, Appellants do not seek relief based on the motions to enforce the settlement and expunge the liens. Instead, they seek relief based on Respondents’ failure to pay their liens.

⁹ We offer no opinion on the merits of Appellants’ causes of action.

Jones, P.J.

WE CONCUR:

Needham, J.

Burns, J.

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